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Robert R. Corbin

October 16, 1987

The Honorable John Mawhinney
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I87-128 (R87-009)

Dear Senator Mawhinney:

You have asked whether the Supreme Court's requirement that a person join the State Bar of Arizona before practicing law in the state conflicts with Ariz. Const., art. XXV. For the reasons outlined below, we do not believe the Supreme Court Rule conflicts with the constitution.

Ariz. Const., art. XXV states:

No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization.

(Emphasis added.) Rule 31(a)(1), Rules of the Supreme Court,^{1/} states, in part, that:

^{1/}Until recently, the regulation of attorneys was statutory. The legislature sunsetted the State Bar of Arizona effective July 1, 1984, pursuant to A.R.S. § 41-2363, enacted by Laws 1982 (2nd Reg. Sess.) Ch. 202, § 14, and repealed the statutes relating to the State Bar of Arizona, A.R.S. §§ 32-201 to -275, effective January 1, 1985, Laws 1982 (2nd Reg. Sess.) Ch. 202, § 17, Ch. 292 § 25, and Ch. 310, § 36.

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all persons now or hereafter licensed in this state to engage in the practice of law shall be members of the State Bar of Arizona in accordance with the rules of this court.

The right-to-work constitutional provision also is the subject of statutes, A.R.S. § 23-1301 to -1307 which define "labor organization" as:

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

A.R.S. § 23-1301(1) (emphasis added).

The State Bar Association does not fit this description of a labor organization. The Association does not deal with individual employers nor bargain concerning employment conditions. Rather, it serves as the legal profession's regulatory agency and polices the profession as a whole, a far different function from that of the employer-employee relationship to which the constitutional right-to-work provision and the statutory definition apply.

Regulation of professions and occupations is a long-accepted state power. The Legislature has inherent authority to regulate professions and occupations based on its police power, the power to enact any law deemed necessary to protect people's property, peace, life, health and safety. State Board of Technical Registration v. McDaniel, 84 Ariz. 223, 228, 326 P.2d 348, 351 (1958). Arizona now regulates 35 professions and occupations in statute. A.R.S. Title 32. Regulation normally is in the form of a license granted by the state to a person to pursue some occupation or carry on a business subject to regulation under the police power. See State Board of Barber Examiners v. Walker, 67 Ariz. 156, 167, 192 P.2d 723, 731 (1948).

Attorneys are "licensed" to practice law by virtue of being admitted to the bar in this state. The power to admit attorneys to the bar lies with the Supreme Court, which has exclusive authority to determine who shall practice law in

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Arizona and under what conditions. Bridegroom v. State Bar, 27 Ariz.App. 47, 550 P.2d 1089 (1976); Anamax Mining Co. v. Arizona Department of Economic Security, 147 Ariz. 482, 485, 711 P.2d 621, 624 (App. 1985). To carry out this function, the Supreme Court perpetuated the State Bar, which remains under the direction and control of the court. Rule 31(a), Rules of the Supreme Court.

Additionally, the Arizona and United States Supreme Courts have approved of the use of "integrated" bars. Bridegroom explicitly stated that the Supreme Court has the inherent power to integrate the state's bar. 27 Ariz.App. at 49, 550 P.2d at 1091. Under an integrated bar, every lawyer within a given area has membership in a cohesive organization. Petition of Florida State Bar, 40 So.2d 902, 904 (Fla. 1949). In deciding a challenge to mandatory bar association membership, based on freedom of association grounds, the United States Supreme Court has held that a state may require attorneys to belong to a bar association, even one that engages in legislative activity, and to pay membership fees to improve the profession. Lathrop v. Donohue, 367 U.S. 820, 844, 81 S.Ct. 1826, 1838, 6 L.Ed.2d 1191, 1205-1206 (1961). Thus, in Arizona, membership in the legal profession as a licensed attorney automatically includes membership in the "state bar" as the governing organization. "State bar" is a generic term referring to all those attorneys who have been admitted to practice. State Bar v. Guardian Abstract and Title Co., 91 N.M. 434, 575 P.2d 943 (1978).

In summary, attorneys must be licensed to practice law, a legitimate state function currently vested in the Arizona Supreme Court. Licensing -- admittance to practice -- automatically brings with it membership in the State Bar of Arizona, which is merely the group of licensed attorneys, as a whole, not a labor union. Such an arrangement does not violate Ariz. Const., art. XXV.

Sincerely,



BOB CORBIN
Attorney General

BC:PAS:gm